



INSIDE NLS

News from the front lines of Neighborhood Legal Services

July, 2019

Public Benefits Takes on ECDSS

The Erie County Dept. of Social Services Special Investigations Division (SID) calculates and recovers overpayments of cash assistance, SNAP and Medicaid from current and past recipients of assistance. Past recipients are asked to come in and voluntarily sign a repayment agreement. As part of this, they must also sign a Confession of Judgement (COJ) which is filed with the Erie County Clerk if the person misses a payment in the plan. The COJ then becomes a lien against the recipient.

When past recipients do not voluntarily enter into a repayment agreement, the County sues the person in state Supreme Court. ECDSS is the largest creditor filing cases in Erie County. Many clients contact the Public Benefits Unit when they begin receiving garnishment of their wages.

As part of their collection efforts, the County has been putting language in the COJs and the complaints that state that the facts of the case constitute fraud on behalf of recipients. This simply is not true. More than 90% of these cases do not involve fraud but are the result of Agency error or inadvertent client error. The “fraud” language makes it impossible for recipients to discharge these debts in a bankruptcy proceeding.

*“Our lives begin to end
the day we are silent
about things that
matter.”*

- Martin Luther King, Jr.

**NLS does not use the
actual names of clients
in *Inside NLS*.**

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Medical Concerns Complicate an Unbearable Situation

“Adele” came to NLS through the Veterans’ Outreach Program. She served in the military during the Iraq war and, in addition to the usual challenges that American service members experience, she endured other traumas that continue to impact her life. Adele was raped by a fellow soldier and became pregnant through that encounter. She later surrendered the child for adoption. That was just the beginning of her issues.

Adele left the service and tried to integrate into civilian life. She married and had two daughters, three years apart. Unfortunately, the younger daughter had a rare condition that resulted in numerous developmental delays. This stress, coupled with emotional and psychological domestic violence by the spouse, resulted in significant post-traumatic stress disorder for Adele. It also signaled the end of her marriage.

After a lengthy divorce action that ended with her conceding full residential custody of the younger daughter to the ex-husband, with shared custody of the older daughter, Adele hoped to make a fresh start. But the ink was barely dry on the paperwork when the ex-husband had her back in court for custody and child support. He also had her jumping through hoops with Child Protective Services (CPS) as she answered one after the other complaint filed by her ex. CPS found the ex-husband’s complaints unfounded.

This stress would be challenging for anyone. For Adele, it was even worse. She eventually needed surgery to remove a tumor from her adrenal gland that the doctors linked to excessive fight-or-flight reactions caused by Post Traumatic Stress Syndrome, the domestic violence, the health concerns for her younger daughter, and the constant investigations by CPS.

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FOILED Again: Request Leads to More Disclosure

On February 13, 2019, Simone Grande, a paralegal in the Disability Law Unit, submitted a Freedom of Information Law (FOIL) request to the New York State of Health (NYSOH) Marketplace because NYSDOH had not updated its Appeal Decision Archive since May 2016.

In her FOIL request, Simone reminded the NYSOH Marketplace of its obligation to provide public access to all appeal decisions. As a direct result of her advocacy, the NYSOH Marketplace added 1,331 fair hearing decisions to their statewide archive and stated that it will “continue to post decisions to the Archive on an ongoing basis, as redactions are completed.”

Since the creation of the NYSOH Marketplace, more and more New Yorkers have access to Medicaid, the Essential Plan and Qualified Health Plans. Having access to up-to-date hearing decisions will allow Simone and Marge Gustas and advocates statewide to thoroughly prepare for and represent Community Health Advocate (CHA) clients at NYSOH appeals. CHA is a statewide program of advocates that helps consumers obtain health care, understand their health insurance, and make it work for them.

Great work Simone!

NLS Good News!

NLS will soon be saying farewell to CHA Paralegal Simone Grande as she begins a new adventure in law school. Simone will be attending UB Law. We all look forward to her success! Good Luck, Simone!



NLS also wants to wish Niagara Falls Paralegal Luis Santos the best of luck as he prepares to take the bar exam at the end of July. Go get 'em Luis!



And a warm welcome to Geoffrey Hale who joins NLS as interim supervisor of the DAP/ Disability/Health Law Unit. Geoffrey has a PhD in German Literature and received his JD from the UB. He is admitted to practice in both federal and state courts. Geoffrey supervised the Rochester and Albany Offices' Health Law Unit at Empire Justice and the Representative Payee Program at Disability Rights NY.



COMING SOON!
The NLS Summer Picnic is scheduled for Friday, August 9th at the beach at Beaver Island, Grand Island. Fun starts at 1:00 pm. watch your emails for more details!

A Tale of Two 10 Day Discontinuances for Temporary Housing Assistance through Erie County Department of Social Services

Back in December 2018, Diana Proske and Carlos Gonzalez assisted "Nelly," who suffers from significant mental health problems. Her worker at the Erie County Department of Social Services (ECDSS) had given her a notice of discontinuance of her emergency shelter placement because of an incident that occurred in the client's first night in shelter. The notice stated that Nelly had engaged in acts which endangered a person's health or safety or engaged in acts that repeatedly or substantially interfered with the orderly operation of the shelter. The shelter staff claimed that Nelly had refused to go to bed and then disrupted the shelter by screaming and yelling. The shelter staff then asked Nelly to leave the shelter (Nelly did not have a place to sleep that night).

Diana challenged the decision at a fair hearing. At the hearing, NLS staff provided ECDSS with documents and testimony demonstrating the extent of Nelly's disability. The Administrative Law Judge determined that the report from shelter staff did not constitute substantial and repeated interference with the orderly operation of the shelter since no pattern had been established. The Agency had also failed to investigate whether Nelly's known mental illness had contributed to her lack of compliance with the shelter staff's request. Recently, ECDSS gave Nelly another discontinuance notice for shelter placement. This notice alleged that the Nelly failed to seek housing other than temporary housing. NLS requested another fair hearing. What was particularly frustrating is that ECDSS again did not account for Nelly's disability.

Nelly had been in the shelter system for many months and required assistance to look for housing. Diana and Carlos were concerned that Nelly would end up homeless if she was expelled from the shelter. After NLS requested the hearing, Nelly's worker at ECDSS finally realized that Nelly cannot comply with all of ECDSS's requirements because of her disability. He agreed to withdraw the discontinuance notice and continue providing Nelly with shelter until she can be placed in an appropriate supportive housing program.

Public Benefits Takes on ECDSS *continued*

The Public Benefits unit has been monitoring SID's collection practices and representing many of these clients in State Supreme Court. As part of their ongoing efforts, Penny Selmonsky and Karen Welch reached out to ECDSS to dialogue on some of these issues. They began meeting with ECDSS counsel and members of the SID unit. They objected to the use of this fraud language in the COJ's and complaints where there has been no evidence of fraud. ECDSS counsel recently agreed to remove this language from all the COJ's and complaints where no finding of fraud had been made. This is one of several victories that that help clients overcome some of the bad collection practices of ECDSS. More to come.

Medical Concerns Complicate an Unbearable Situation *continued*

The NLS Family Unit took on Adele's child support case in Family Court, while another attorney handled the custody motion in Supreme Court. We received and answered discovery demands and served our own on opposing counsel. We attempted to settle the matter with a reasonable offer, given the facts and law in the case. However, when the offer was rejected, we had a full hearing before the support magistrate. At the conclusion, we argued that the ex-husband had not met his burden of showing a substantial change in circumstances to warrant a change from the separation agreement.

Four days after the hearing, the written decision in Adele's favor, along with an order of dismissal, came from Family Court. Adele has gained some control over her circumstances. She feels like she can move forward to see a physical and psychological health improvement that she deserves.

Who Am I?



Want to play?

Send your baby picture - or a picture of your baby co-worker - to kculmer@nls.org.

The answer next month!

Have a Story to Share?

Email your story to
Jim Morrissey at
jmorrissey@nls.org

GIVING HELP GIVING HOPE

The mission of Neighborhood Legal Services, Inc. is to provide a full range of free civil legal representation to low income and disabled people residing in Erie, Niagara, Orleans, Genesee, and Wyoming Counties, in matters involving their financial security and the legal rights which affect the stability of families and individuals. Our goal is to create the greatest access to the justice system for those low-income and disabled people without the means to pursue their rights. Our mission also includes providing outreach and training services to underprivileged populations and the community agencies which serve them.